D.P.U. 94-8C-A, D.P.U. 95-8C-1, D.P.U. 96-8C-1

Application of Western Massachusetts Electric Company under the provisions of G.L. c. 164, § 94G for approval by the Department of Public Utilities of the actual unit by unit and system performance of the Company with respect to each target set forth in the Company's approved performance programs for the performance periods between June 1, 1993 and May 31, 1996.

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I. INTRODUCTION

On February 27, 1996, Western Massachusetts Electric Company ("WMECo" or "Company") and the Attorney General of the Commonwealth ("Attorney General") filed for approval with the Department of Public Utilities ("Department") a Joint Motion for Approval of Settlement and an Offer of Settlement ("Settlement").[1] The Settlement concerned the Company's generating unit performance reviews for the years 1994, 1995, and a portion of 1996,[2] docketed as D.P.U. 94-8C-A, D.P.U. 95-8C-1, and D.P.U. 96-8C-1. On March 1, 1996, the Department issued an Interim Order on Offer of Settlement, allowing the Company to put into effect the terms of the Settlement on an interim basis. Western Massachusetts Electric Company, D.P.U. 94-8C-A, D.P.U. 95-8C-1, D.P.U. 96-8C-1, Interim Order on Offer of Settlement (March 1, 1996).

The Department held an evidentiary hearing at the Department's offices on the Settlement on March 21, 1996. At the hearing, the Company sponsored the testimony of John J. Roman, controller and vice president, and David Longyear, staff accountant. The evidentiary record consists of the following: two WMECo exhibits, 176 Attorney General exhibits plus eleven supplements, 99 Department exhibits plus two supplements, and Company responses to five Department record requests.[3]

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1 The Company indicated in its filing that copies of the Joint Motion and Offer of Settlement have been provided to all parties in WMECo's last base rate proceeding, D.P.U. 91-290, and WMECo's last Conservation Charge proceeding, D.P.U. 96-8-CC.

2 The Settlement of the 1996 performance program results is limited to one outage, Refueling Outage 12 at Millstone 2.

3 During the hearing, the Department marked for identification purposes all discovery requests in D.P.U. 94-8C-A and D.P.U. 95-8C-1 to which the Company had responded;

(continued...)

During discovery in D.P.U. 94-8C-A and 95-8C-1, the Company filed thirteen different requests for confidential treatment of responses to discovery pursuant to G.L. c. 25, § 5D. Specifically, the Company requested confidential treatment for the following information requests: AG 1-1 and AG 1-2 (Institute of Nuclear Power Operations ("INPO") documents); AG 1-13 and AG 1-28 (self-critical analyses, including Nuclear Safety Engineering Group ("NSEG") documents); AG 2-4 (supplement) (NSEG documents); AG 2-12(z) (NSEG documents); AG 2-22 and AG 4-14 (INPO and NSEG documents); AG 4-17 (NSEG documents); DPU 1-4 (c) and (e) (inspection and maintenance procedures and the operating guidelines of a third-party vendor); DPU 2-22 (assembly drawing of a third-party vendor); and AG 5-13 and AG 6-10 (internal analyses and investigations). According to the Company, each of these requests contains information which is a trade secret, confidential, competitively sensitive, or otherwise proprietary, and as such meets all the criteria necessary for each to be protected from public disclosure by the Department pursuant to G.L. c. 25, § 5D. The Company has also noted that it made this information available to the Attorney General pursuant to a Nondisclosure Agreement.

G.L. c. 25, § 5D authorizes the Department to protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information. The self-critical analyses, including INPO[4] and NSEG documents, are confidential in nature, and therefore

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3(...continued)
however, at the time of the hearing, the list of exhibits was incomplete. The exhibit list is now complete. At the hearing, the parties indicated that they had no objections to moving these exhibits into evidence. Therefore, the Department hereby moves into evidence the above-listed exhibits.

4 The Department has previously protected INPO documents from public disclosure.
(continued...)

appropriately protected from public disclosure. The Company's responses to information requests DPU 1-4 and DPU 2-22 contain proprietary documents of third-party vendors. Therefore, these responses are also appropriately protected from public disclosure. Accordingly, pursuant to G.L. c. 25, § 5D, the Department grants WMECo's request to protect from public disclosure the above-listed exhibits in their entirety.

As a result of staff questioning at the evidentiary hearing, the Company amended the Settlement on March 22, 1996. On March 29, 1996, the Company notified the Department it would further amend the Settlement, and on April 4, 1996, filed an Amended Offer of Settlement ("Amended Settlement") and tariffs implementing the Amended Settlement.[5]

The Department received comments on the Settlement and Amended Settlement. The Department received a letter from the Conservation Law Foundation indicating its general support for those aspects of the original Settlement dealing with the Settlement's treatment of Lost Base Revenues ("LBR").[6] The Industrial Customers filed a letter with the Department stating that they would not oppose the Amended Settlement as filed on April 4, 1996. Commonwealth Electric Company and Cambridge Electric Light Company did not comment on the Settlement or Amended Settlement.

4(...continued)
See Boston Edison Company, D.P.U. 94-1A-1 (1994).

5 On April 23, 1996, the Company filed a substitute page 8 of the Amended Settlement, correcting a typographical error.

6 Lost base revenues are those revenues that a company does not collect from its ratepayers because of the decrease in the billing units that result from Demand-Side Management program savings.

II. SUMMARY OF 1994-1996 PERFORMANCE REVIEW PROCEEDINGS

A. Procedural History

The Settlement proposes to resolve performance review issues relating to three performance periods, from June 1, 1993 to May 31, 1994; from June 1, 1994 to May 31, 1995; and from June 1, 1995 to May 31, 1996. On August 12, 1994, WMECo filed with the Department its annual performance program results for the twelve month period ending May 31, 1994. The Attorney General filed a notice of intervention. A public hearing was held on September 22, 1994. The Department and the Attorney General conducted extensive discovery.[7]

On August 18, 1995, WMECo filed with the Department its annual performance program results for the twelve month period ending May 31, 1995. The Attorney General filed a notice of intervention, and the Department granted intervenor status to Cambridge Electric Light Company and Commonwealth Electric Company, and the Industrial Customers.[8] The Department held a public hearing on the annual performance program results on March 21, 1996. Some discovery has been conducted.

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7 On November 4, 1994, WMECo objected to Attorney General discovery questions which requested Nuclear Safety Engineering Group ("NSEG") information, stating that the Company should not be required to produce such self-critical analyses. On November 23, 1994, the Attorney General filed a Motion to Compel Discovery, arguing that the Department had previously ruled in D.P.U. 92-8C-A that the Attorney General has a legitimate right to obtain the NSEG reports, and that the Company's current objections present no new facts or arguments of law that were not fully considered and rejected by the Department in D.P.U. 92-8C-A. WMECo subsequently provided the disputed documents subject to a nondisclosure agreement.

8 The petition to intervene of the Industrial Customers indicated that the Industrial Customers consist of General Electric Company, International Paper Company, Strathmore Mill, Mead Corporation, Monsanto Company, and Schweitzer-Mauduit International, Inc. (formerly Kimberly-Clark Corporation).

The Company has not filed its annual performance program results for the twelve month period ending May 31, 1996, which is due in August 1996. The Amended Settlement addresses the Refueling Outage 12 ("RFO-12") at Millstone 2 which occurred during this performance year, and the Company provided information on this outage as an attachment to the Settlement. The Attorney General filed a notice of intervention, and the Department granted intervention status to the Industrial Customers. The Department held a public hearing on D.P.U. 96-8C-1 on March 21, 1996. No discovery has been conducted on this docket.

B. Performance Program Results

The Department's review of the Company's generating unit performance has focused on the performance of the Company's nuclear units, Millstone 1, Millstone 2, Millstone 3, Connecticut Yankee, and Vermont Yankee,[9] which experienced multiple outages during the period that is the subject of the proposed Amended Settlement.[10]

1. D.P.U. 94-8C-A

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9 Millstone 1 is a 660 megawatt boiling water reactor that began commercial operation in 1970. Millstone 2 is an 870 megawatt pressurized water reactor that began commercial operation in 1975. Millstone 3 is a 1,150 megawatt pressurized water reactor that began commercial operation in 1986. All three nuclear power plants are located at Millstone Station in Waterford, Connecticut. Connecticut Yankee is a 582 megawatt pressurized water reactor located in Haddam Neck, Connecticut, which began commercial operation in 1968. Vermont Yankee is a 520 megawatt boiling water reactor located in Vernon, Vermont, which began commercial operation in 1972.

10 WMECo also has an entitlement in Maine Yankee, an 870 megawatt pressurized water reactor located in Wiscasset, Maine, which began commercial operation in 1972. However, on January 25, 1994, a Hearing Officer Ruling was issued stating that Cambridge Electric Light Company's performance review docket would be an appropriate docket for review of Maine Yankee performance. In compliance with the January 25, 1994 Ruling, the Company did not present performance results for Maine Yankee in D.P.U. 94-8C-A or D.P.U. 95-8C-1.

The Department's review focused on multiple forced outages and extensions to planned outages at Millstone 1, 2, and 3, Connecticut Yankee, and Vermont Yankee, which occurred from June 1, 1993 to May 31, 1994. The Department issued 85 information requests and the Attorney General issued 188 information requests in this proceeding. According to the Company, the replacement power costs associated with the outages reviewed in this proceeding were $10,710,000.00[11] (WMECo's response to information request AG 5-1 in D.P.U. 94-8C-A; RR-DPU-2).

2. D.P.U. 95-8C-1

The Department's review focused on several forced outages and extensions to planned outages which occurred at Millstone 1, 2, and 3, Connecticut Yankee, and Vermont Yankee from June 1, 1994 to May 31, 1995. The Department issued 19 information requests and the Attorney General issued 32 information requests. The Company estimated that the events reviewed in this proceeding resulted in $3,455,000.00 in replacement power costs (RR-DPU-2).

3. D.P.U. 96-8C-1

The Amended Settlement addresses the RFO-12 at Millstone 2 which occurred during this performance year and which duration was extended by 253.6 days. No information requests have been issued regarding RFO-12 at Millstone 2, since the Company's due date for filing the performance results for the period from June 1, 1995 to May 31, 1996, is August 1996.

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11 WMECo explained that its numbers for the estimated replacement power costs were based on a differential of $17.00 per megawatthour between fossil and nuclear power costs (WMECo's response to information request AG 5-1 in D.P.U. 94-8C-A).

However, as an attachment to the Settlement Offer, WMECo submitted a post-outage report for RFO-12, addressing the specific issues and problems that resulted in the extension to the refueling outage. According to the Company, the total replacement power costs incurred by WMECo in connection with this outage were $12,999,000.00 (Settlement, Attachment A; RR-DPU-1).

III. TERMS OF THE AMENDED SETTLEMENT PROPOSAL

The proposed Amended Settlement includes the following provisions;

A. Termination of WMECo's 1994 and 1995 Performance Review proceedings and that portion of WMECo's 1996 Performance Review proceeding involving RFO-12 at Millstone 2, which lasted from October 1, 1994 through August 4, 1995 (Amended Settlement at 4-5). The Amended Settlement also states that all requests, appeals, motions, or other issues raised by the parties in D.P.U. 94-8C and D.P.U. 95-8C are hereby withdrawn (id. at 4).

B. The $8,000,000 decrease in the Company's base rates that was approved in Western Massachusetts Electric Company, D.P.U. 88-8C et al., (1994) ("1994 Settlement")[12] would be extended through February 28, 1998.[13] In addition, except as provided in subsection C below, the Company would not seek an

12 The 1994 Settlement terminated performance reviews for D.P.U. 88-8C, D.P.U. 89-8C, D.P.U. 90-8C, D.P.U. 91-8C, D.P.U. 92-8C, and D.P.U. 93-8C.

13 On March 1, 1996, WMECo was entitled to raise rates $8 million to pre-1994 Settlement levels. Pursuant to the Interim Order on Offer of Settlement, WMECo did not institute this increase. However, WMECo did put into effect the terms of the Settlement, which allowed it to increase base rates by $8 million for LBR roll-in, but decrease customer Conservation Charges by $7.2 million. Customer bills therefore changed slightly on March 1, 1996.

increase in base rates to become effective before March 1, 1998 (id. at 3).

C. The recovery of $8,000,000 of LBR would be transferred from WMECo's Conservation Charge ("CC") rates to its base rates. This $8,000,000 base rate roll-in would be allocated to rate classes consistent with the CC allocation method. LBR associated with Demand-Side Management ("DSM") measures installed after January 1, 1996 only would continue to be recovered through the CC rates (id. at 5-6).

D. WMECo would amortize additional expenses over levels otherwise authorized by the Department at an annual level of $7,000,000 for the remainder of 1996 and $10,000,000 for 1997 to fund decommissioning accruals for Millstone Units 1, 2, and 3 and to reduce the FAS 109 deferred income tax obligation related to generation assets (id. at 7-8).

IV. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest and results in just and reasonable rates. See Western Massachusetts Electric Company, D.P.U. 88-8C et al. (1994); Barnstable Water Company, D.P.U. 93-223, at 4 (1994); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

The Department's authority to review and approve settlements of generating unit

performance review issues is derived from its statutory mandate to ensure that investor-owned electric utility companies achieve the lowest possible overall costs to their customers for the procurement and use of fuel and purchased power included in the fuel charge, consistent with accepted management practices, safety and reliability of electric service, and reasonable regional power exchange requirements. See G.L. c. 164, § 94G(a); see also Boston Edison Company, D.P.U. 88-28 et al. at 9 (1989). In assessing the reasonableness of an offer of settlement that purports to settle performance review issues, the Department must scrutinize the settlement agreement in light of the evidentiary record and then weigh the settlement against the probable outcome and resulting rates were the performance review issues to follow the customary course to issuance of final Department Orders. Boston Edison Company, D.P.U. 88-28 et al. at 9-10. As part of its analysis, the Department must assess whether the financial accommodation reached between the company and other parties to the settlement agreement fairly repairs the harm to ratepayers that the company's actions and decisions may reasonably be said to have caused. D.P.U. 88-28 et al. at 10.

In order to assess the probable outcome of a performance review proceeding, the Department must apply the appropriate statutes and other precedent to the information available in the record. The Department's statutory authority for undertaking generating unit performance reviews is found in G.L. c. 164, § 94G. The Department is authorized to set a quarterly fuel charge for a company's recovery of prudently incurred costs for fuel and purchased power. G.L. c. 164, § 94G(b). To aid in determining the prudence of such costs at a later date, the Department is required to annually set performance goals for the generating units that provide

electric power to jurisdictional electric companies. G.L. c. 164, § 94G(a).

Also in accordance with G.L. c. 164, § 94G, the Department conducts annual performance review proceedings wherein actual performance data obtained during a company's performance period are reviewed and compared to the goals that had been set for that period in a prior goal-setting proceeding. Should a company fail to achieve one or more of the goals established for a performance period under review, the company must present evidence explaining the variance at the next fuel charge proceeding. G.L. c. 164, § 94G(a). The Department conducts an investigation into the circumstances behind each failure. These investigations typically involve a detailed review of activities surrounding particular generating units in order to determine whether a company, in operating and maintaining its units, followed all reasonable or prudent practices consistent with the statute. Specifically, if the Department finds that the company has been unreasonable or imprudent in such performance, in light of the facts which were known or should reasonably have been known by the company at the time of the actions in question, the company shall deduct from the fuel charge proposed for the next quarter or such other period as it deems proper the amount of those fuel costs determined by the Department to be directly attributable to the unreasonable or imprudent performance. G.L. c. 164, § 94G(a).

V. ANALYSIS AND FINDINGS

The Department has evaluated fully the provisions of the proposed Amended Settlement in light of the entire record of all performance review proceedings that the Amended Settlement seeks to terminate and finds that the Amended Settlement financial provisions present a balanced resolution of the matters before the Department. Accordingly, the Department finds that the

Amended Settlement is consistent with Department precedent, is in the public interest, and results in just and reasonable rates. Therefore, the Department approves the Amended Settlement. In addition, the Department has reviewed the tariffs filed on April 4, 1996, by the Company and finds them to be in conformance with the Amended Settlement. Therefore, the Department approves tariffs M.D.P.U. Nos. 950 through 961.[14]

In accordance with the terms of the Amended Settlement, our acceptance of the Amended Settlement does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this proceeding. Finally, we note our acceptance of the Amended Settlement does not set a precedent for future performance review proceedings or rate filings, whether ultimately settled or adjudicated.

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14 It is the Department's understanding that on March 1, 1998, base rates would revert to the level approved in D.P.U. 91-290.

VI. ORDER

After due notice, and consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement, as amended on April 4, 1996, by the Attorney General and Western Massachusetts Electric Company, be and hereby is granted; and it is

FURTHER ORDERED: That the tariffs, M.D.P.U. Nos. 950 through 961, filed with the Department on April 4, 1996, by Western Massachusetts Electric Company, to become effective May 1, 1996, be and hereby are approved.

By Order of the Department,

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John B. Howe, Chairman

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Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971.)